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Paper No. 6

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DEC 13 2002

OFFICE OF PETITIONS

In re Application of :
Vanstone, Menezes, Qu, and Struik : DECISION REFUSING STATUS
Application No. 10/092,972 : UNDER 37 CFR 1.47(a)
Filed: 8 March, 2002 :
Atty Docket No. 00001-0436 :

This is in response to the petition filed under 37 CFR 1.47(a) on 12 November, 2002.

The petition is **DISMISSED**.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor.

FAILURE TO RESPOND WILL RESULT IN ABANDONMENT OF THE APPLICATION.

Extensions of time may be obtained in accordance with 37 CFR 1.136(a).

The above-identified application was filed on 8 March, 2002, without an executed oath or declaration. Accordingly, on 11 April, 2002, a Notice to File Missing Parts of Nonprovisional Application was mailed, requiring an executed oath or declaration and a surcharge for its late filing.

In response, on 12 November, 2002,¹ petitioners filed the present petition, along with a five (5) month extension of time and a declaration naming Scott A. Vanstone, Alfred J. Menezes, Minghua Qu, and Rene Struik as joint inventors and signed by all of the

¹Since 11 November, 2002, was a federal holiday within the District of Columbia, this correspondence is timely filed. 37 CFR 1.6(a)(3). MPEP 502.01.

joint inventors except Qu on behalf of themselves and joint inventor Qu.

Petitioners state that joint inventor Qu refuses to sign the declaration.

A grantable petition under 37 CFR 1.47(a) requires:

(1) proof that the non-signing inventor cannot be reached or located, notwithstanding diligent effort, or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings);

(2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116;

(3) the petition fee;

(4) a surcharge of \$130 or \$65 (small entity) if the petition and/or declaration is not filed at the time of filing the application, and

(5) a statement of the last known address of the non-signing inventor.

The petition lacks item (1). In regards to item (1), petitioners have not provided proof that Qu was ever sent or presented with a copy of the application as filed (specification, including claims, drawings, if any, and the declaration).² The showing of record is that joint inventor Qu was sent only the declaration. Petitioners may show proof that a copy of the application was sent or given to the non-signing inventor for review by providing a copy of the cover letter transmitting the application papers (specification, including claims, drawings, if any, and the declaration) to the non-signing inventor or details given in an affidavit or declaration of facts by a person having first-hand knowledge of the details.

Likewise, before a *bona fide* refusal to sign the declaration can be alleged, petitioners must show that a copy of the application was sent or given to the inventor. If the inventor refuses in writing, petitioners must submit a copy of that written refusal with any renewed petition. If the refusal was made orally to a person, then that person must provide details of the refusal in an affidavit or declaration of fact.

The petition fee of \$130.00 has been charged to counsel's deposit account, No. 15-0633, as authorized in the fee transmittal submitted with the original application papers.

²MPEP 409.03(d).


Further correspondence with respect to this matter should be addressed as follows:

By mail: Assistant Commissioner for Patents
Box DAC
Washington, D.C. 20231

By FAX: (703) 308-6916
Attn: Office of Petitions

By hand: Crystal Plaza Four, Suite 3C23
2201 S. Clark Place
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Telephone inquiries related to this decision should be directed to the undersigned at 703-308-6918.


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